

The third area we need to understand Judge Sotomayor's approach to deciding cases involving employment discrimination. We need to understand how Judge Sotomayor interprets and applies the Equal Protection Clause of the fourteenth amendment, which reads in part:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

For most Americans, the "equal protection of the laws" means just what it says. It means that government cannot treat you differently based on your race or your sex or your ethnicity. It simply means that government cannot legally practice discrimination, including reverse discrimination.

But in a case recently argued to the U.S. Supreme Court called *Ricci v. DiStefano*, Judge Sotomayor participated in a Court of Appeal's decision which raises legitimate questions about her commitment to the provisions of equal protection of the laws in the Constitution. At least I think it raises questions that we need to ask her to respond to and to hopefully clarify her views on whether government can lawfully discriminate based on skin color.

The facts of that case—the case involves firefighters in New Haven, CT. The fire department established a testing program to ensure a fair process in deciding who would be promoted to captain and lieutenant. The testing was rigorous, and it was not racially biased. It was racially neutral to give everyone a fair chance to succeed in taking the test.

But the government, as it turned out, did not get the results it wanted. The mayor and five commissioners of New Haven felt that not enough African Americans had passed the test, so they threw out the test and refused to promote anyone.

This was unfair to the firefighters who had qualified for promotion. Many of the firefighters were of Italian or Hispanic descent and felt they themselves had fallen victim to racial discrimination by the city government.

In fact, one of the fire commissioners was quoted as saying the department should stop hiring people with too many vowels in their name.

So the firefighters sued in Federal court. The case came before a three-judge panel, including Judge Sotomayor. Judge Sotomayor voted to dismiss the case even before these firefighters had a chance to go to trial. The panel of three judges that she participated in issued a one-page opinion that was unpublished and did not even address these claims for the merits of the case or the constitutional issues brought by these petitioners.

Madam President, I ask unanimous consent to speak for an additional 3 minutes.

The PRESIDING OFFICER (Mrs. HAGAN.) Without objection, it is so ordered.

Mr. CORNYN. The firefighters were disappointed in Judge Sotomayor's de-

cision, and, indeed, some of her colleagues on the bench were shocked by the refusal to even acknowledge, much less address, the claims by these firefighters.

One colleague, Judge Jose Cabranes, appointed by President Clinton, worked to get the case reconsidered by the entire Second Circuit. He wrote that the case might involve "an unconstitutional racial quota or setaside." He said, "At its core, this case presents a straightforward question: May a municipal employer disregard the results of a qualifying examination which was carefully constructed to ensure race-neutrality, on the ground that the results of the examination yielded too many qualified applicants of one race and not enough of another?"

Judge Sotomayor apparently was not persuaded to answer that question. But thankfully the U.S. Supreme Court will. In a matter of days, we will know the U.S. Supreme Court's decision, which will help the American people understand whether Judge Sotomayor's philosophy is within the judicial mainframe or well outside it.

There are other statements that the judge has made in the course of her long career, including one at Berkeley in 2001, which has received quite a bit of press coverage where she said:

I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

President Obama has said she misspoke. But it is clear that is not the case. Congressional Quarterly reported that she used this language, or something very similar to it, in multiple speeches in 1994 to 2003.

It would be one thing if Judge Sotomayor was simply celebrating her own journey as a successful Latino woman in our country. Every American would understand that, because her story is an American success story. And all of us can justly take pride that someone of a humble origin who worked hard and sacrificed has achieved so much in this country.

In particular, the Hispanic community is justly proud of her achievements. She is, indeed, a role model for young people and is a symbol of success.

All Americans can be proud that Hispanics are assuming more and more positions of authority in our society. Indeed, the Bush administration nominated more Hispanic Federal judges than any previous administration. Unfortunately, they have not always received the sort of fair and dignified consideration that Judge Sotomayor will.

Miguel Estrada, who was nominated for the Second Circuit, was not treated respectfully during his confirmation proceedings. He was filibustered seven times, and denied an up-or-down vote on his confirmation.

So I wish to make clear that there is no problem if Judge Sotomayor was

simply showing pride in her heritage as we all should as a nation of immigrants. But if it suggests a judicial philosophy that says that because of sex or race or ethnicity, a judge is better qualified and more likely to reach correct legal decisions, I simply do not understand that contention, and I would like the opportunity to ask her about it.

One of her fellow judges contrasted their views by saying:

. . . judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law.

I think that is exactly right. So we need to know whether Judge Sotomayor embraces this notion of colorblind justice that most Americans expect from the highest Court in the land. I hope she will be given an opportunity—indeed she will be given an opportunity—to clarify her comments and let us know whether she intends to be a Supreme Court Justice for all of us or just for some of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

ORDER OF PROCEDURE

Mrs. SHAHEEN. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Madam President, if the Senator will yield for a unanimous consent request, I am here to speak on the same subject as she. I wonder if she could expand her request to say that upon finishing, I could have about 5 minutes.

Mrs. SHAHEEN. I am delighted to do so for my colleague from California.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I thank the Senator.

Mr. CARPER. Would the Senator restate her request.

The PRESIDING OFFICER. The Senator from California has requested 5 minutes.

Mr. CARPER. I have been waiting for a while.

Mrs. BOXER. Madam President, I apologize to my colleague. We are here to quickly speak about a very important issue, the murder of a doctor. I didn't want it to be interrupted. I ask unanimous consent that following my remarks, the Senator from Delaware be recognized.

Mr. GREGG. Reserving the right to object, as I understand it, we are supposed to be moving to the supplemental. There is a unanimous consent agreement which has been reached. Hopefully, that will be placed in order.

The PRESIDING OFFICER. The Senate is in a period of morning business.

Mr. GREGG. I object to any more unanimous consents.

Mrs. BOXER. They already passed.

Mr. GREGG. I am objecting to the one the Senator from California just propounded.

Mrs. BOXER. For Senator CARPER? Is there any way we can assuage the Senator? Does he want to take the floor before Senator CARPER?

Mrs. SHAHEEN. Madam President, I believe I still have the floor.

The PRESIDING OFFICER. The Senator has the floor.

CONDEMNING THE USE OF VIOLENCE

Mrs. SHAHEEN. Madam President, yesterday, along with Senators BOXER, KLOBUCHAR, and 43 other Senators, I submitted S. Res. 187, a resolution condemning the use of violence against providers of reproductive health care services to women and expressing sympathy for the family, friends, and patients of Dr. George Tiller.

Unfortunately, the murder of Dr. Tiller was not an isolated incident. Our country has a history of violence against reproductive health care providers. Since 1993, eight clinic workers have been murdered, and there have been hundreds of additional attempted murders, bombings, death threats, and kidnappings. Since 1977, there have been more than 5,800 reported acts of violence against providers and clinics.

My own State has been touched by such acts of violence. In December 1994, a man from New Hampshire killed two workers at clinics in Massachusetts, including a nurse from Salem, NH. Almost 9 years ago, the Feminist Health Center in Concord, NH was burned in an arson attack. These acts of violence are not acceptable. Not only do they violate our laws and lead to human tragedy, but they dissuade medical professionals from entering a field of medicine that is critically important to women across the country.

I realize that the issue of reproductive choice is divisive. I know there are many heartfelt feelings on both sides of this issue and on both sides of the aisle, even within my own caucus. However, I was hopeful that regardless of our differences of opinion on this sensitive issue, the Senate could come together and quickly pass a resolution that rejects the use of violence against reproductive health care providers. Sadly, this is not the case.

My cosponsors and I have tried to pass this resolution by unanimous consent. Unfortunately, some on the other side of the aisle have objected. How disappointing it is that in this country and in this body, we can't come together to unanimously condemn the use of violence. My cosponsors and I were urged to eliminate references to women's reproductive health care to get this resolution passed through the Senate. We are not going to back down. This country should be able to come together to condemn violence against reproductive health care providers. It is a very sad day when the elected leaders of the greatest democracy on Earth cannot agree to protect those exercising their constitutional rights.

I am pleased to be joined by 45 of my colleagues on this important resolu-

tion. We are saddened that we are not able to pass it without objection.

I wish to now read this simple resolution, a resolution condemning the use of violence against providers of health care services to women.

Whereas Dr. George Tiller of Wichita, Kansas was shot to death at church on Sunday, May 31;

Whereas there is a history of violence against providers of reproductive health care, as health care employees have suffered threats, hostility, and attacks in order to provide crucial services to patients;

Whereas the threat or use of force or physical obstruction has been used to injure, intimidate, or interfere with individuals seeking to obtain or provide health care services; and

Whereas acts of violence are never an acceptable means of expression and always shall be condemned. Now, therefore, be it Resolved, That the Senate expresses great sympathy for the family, friends, and patients of Dr. George Tiller; recognizes that acts of violence should never be used to prevent women from receiving reproductive health care; and condemns the use of violence as a means of resolving differences of opinion.

I find it hard to believe that this language condemning the murder of a health care provider and expressing sympathy to a family in mourning could be objectionable.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much.

Madam President, I want to say to my friend, Senator SHAHEEN, that her words were eloquent here today and that her voice adds so much texture to the Senate. In a very plainspoken way, as is her way, Senator SHAHEEN has told us that regardless of where we stand on this issue, this contentious issue of a woman's right to choose, we should be able to come together when there is violence of any sort from any quarter, right, left, or center. There is no place for violence in any of our debates. That is what makes this such a great country. We debate here. We have had difficult debates here on the issue of a woman's right to choose. Yes, we have. But we decide those issues in this Chamber, in the House, at the White House, and across the street at the Supreme Court. And the Supreme Court has ruled very clearly, in 1973, in *Roe v. Wade*, that it is legal—legal—for a woman in the early stages of her pregnancy to make this tough choice and get the health care she needs. And, yes, later in the pregnancy, if her health is threatened, if her life is threatened, yes, a doctor can help her in that type of a circumstance.

Here we have many cases where violence is being used, where Web sites are being put up with pictures of doctors and nurses, trying to incite trouble, trying to incite violence, and that is not what the law allows.

With the case of Dr. Tiller, he was a doctor. After this tragedy where he was shot and killed in church—and before that, he had his arm shot, but he continued his work—many, many women came forward to attest to how kind he was to them in their great need.

Dr. Tiller operated within the law. There were those who tried to run him out of town with lawsuits, and he won all of those.

So when a procedure is legal and a doctor is following the rules, to have a murder of a doctor in that circumstance is a tragedy to his family, to his friends, to his patients, and, yes, frankly, to America because it diminishes us as a society.

I want to tell it like it is around here. Every Democrat cleared this resolution and said, yes, we ought to have a chance to bring it to the floor and be voted upon. That is all my colleague wants. She wrote a simple resolution. She read it to you. She wants a vote. Every Democrat said, yes, let's bring it to the floor. If you do not like it, you do not have to vote for it. If you want to change it, make an amendment to change it.

But the Republicans will not clear this resolution. Now, I have to say to the people who may be listening to this debate, hear what I am saying. The Republicans will not allow a vote, will not clear a resolution that simply says, in the resolve clause—and I quote from it—we express “great sympathy for the family, friends and patients of Dr. George Tiller.” We recognize “that acts of violence should never be used to prevent women from receiving reproductive health care,” and we condemn “the use of violence as a means of resolving differences of opinion.”

I think my colleague, in her eloquence here, has said it all. I urge those people who are anonymously holding up this resolution, come to the floor, have the courage and the guts to look out at this Chamber and explain why you do not believe we should condemn acts of violence to prevent women from receiving their health care, and come to the floor and explain why you are not ready to condemn the use of violence as a means of resolving differences.

This is the greatest democracy in the world. We will not be the greatest democracy in the world if we decide we are going to take the law into our own hands and kill people with whom we disagree.

So I beg my colleagues on the other side of the aisle to rethink their position because, I can tell you, anyone who does not know Senator SHAHEEN—she was the Governor of a State, she is a great Senator already—she is not going to give up on this. We are going to be here day after day. We are going to ask that this be brought before the body. And we are going to make those who are stopping us from voting on this come to the floor and explain why they cannot join with us.

We know abortion is a contentious issue. We appreciate that. We respect our colleagues' views. Frankly, I totally respect their views on the issue. But I do not respect someone who is anonymously holding up a resolution that condemns violence.

So I am going to work with my colleague. I am very proud of her work on